IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 443 OF 2005

Dhanaji Manikrao Konde
Haveli, Dist. Pune. ... Appellant

V/s

1. Dnyaneshwar Raosaheb Konde & anr.
At Khed-Shivapur, Tal. Haveli,
Dist. Pune. ... Respondents

Mr. S.M. Sabrad for the appellant.

Mr. S.N. Chandrachud for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 9TH JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the order passed by the Addl. District Judge, Pune, dated 14.3.2005 dismissing his appeal and confirming the judgment and order passed by the Civil Judge, Jr. Divn., Pune, dated 12.9.2003 dismissing the plaintiff's suit for perpetual injunction simplicitor.

2. It was the case of the plaintiff that the suit proeprty located at Khedshivapur, Tal. Haveli, Dist. Pune was owned by him alongwith his two brothers as well

as defendants and other co-sharers. It was submitted that the suit property was their ancestral joint family property and he had common right of way from main Western side door of City Survey No. 213/A to approach their residence. The learned Trial Judge, after hearing both sides, adjudicated the dispute on merits and concluded that the plaintiff failed to prove that there was a passage which was common passage of the plaintiff and the defendants in the suit property. It was further held that plaintiff also failed to establish that defendants were obstructing his right of way over the said suit way and, as such, the suit came to be dismissed.

3. The appeal was preferred to the District Court. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the findings recorded and the order passed by the learned Trial Judge was legal and proper and, therefore, no interference was called for and dismissed the appeal. Hence the present appeal.

4. I have the learned counsel for both parties. Perused the record.

5. At the outset, it may be noted that the only issue involved in this appeal is regarding the right of alleged common passage over the suit property. Both the Courts below have come to the conclusion that the plaintiff has failed to prove the alleged right of way over the common property and, therefore, non-suited the present appellant. There is absolutely no substantial question of law involved in this appeal especially when the available evidence on record is seen to be properly appreciated by the lower appellate Court and, therefore, would brook no interference.

6. In the result, the appeal stands dismissed. Consequently, the Civil Application No. 763 of 2005 also stands dismissed.

(P.V. Kakade, J.)